

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RANDALL J STRANDQUIST,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT

OF SOCIAL AND HEALTH SERVICES;

WENDY LONG,

Defendant.

Case No. 3:23-cv-05071-TMC

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
JOINT *DAUBERT* MOTION

This case arises from the termination of Plaintiff Randall J. Strandquist's employment with Defendant Washington State Department of Social and Health Services (DSHS) after he declined to be vaccinated against COVID-19. Before the Court is Defendants' joint *Daubert* motion (Dkt. 36). Defendants ask the Court to exclude the testimony of Plaintiff's expert witnesses Lisa Brock and Dr. Harvey Risch. For the following reasons, the motion is GRANTED in part and DENIED in part.

I. BACKGROUND

Strandquist initiated this case on January 27, 2023, Dkt. 1, and amended his complaint on October 2, 2023. Dkt. 20. Strandquist was employed at Eastern State Hospital (ESH or

1 “Eastern”) as a forensic evaluator, where he conducted psychological evaluations of individuals
2 with serious or long-term mental illnesses. Dkt. 34 ¶ 2–3. Strandquist requested a religious
3 exemption to the COVID-19 vaccine mandate and was offered an accommodation of
4 reassignment to a telework position after DSHS concluded it could not accommodate him in his
5 own position. Dkt. 32-4; Dkt. 35-1. He was separated from Eastern after declining the
6 reassignment and refusing to get vaccinated. Dkt. 42 at 23–24. Defendants are DSHS and Wendy
7 Long, Senior Director of the Human Resources Division at DSHS. Dkt. 20 ¶¶ 2–3.

8 Strandquist alleges claims under the U.S. Constitution, Washington State Constitution,
9 Title VII, and state laws against all Defendants. *Id.* ¶¶ 59–164. On August 20, 2024, Defendants
10 moved for summary judgment on all claims and filed the instant motion asking the Court to
11 exclude the testimony of Strandquist’s experts. Dkt. 31; Dkt. 36. Strandquist moved for partial
12 summary judgment, Dkt. 38, attaching declarations from Dr. Alan Risch and Lisa Brock in
13 support of his motion. Dkt. 40; Dkt. 41. On September 10, 2024, Strandquist filed additional
14 declarations from Dr. Risch and Ms. Brock supporting his opposition to Defendants’ summary
15 judgment motion. Dkt. 48-1; Dkt. 50-1.

16 Dr. Alan Risch is a Professor Emeritus of Epidemiology at Yale School of Public Health
17 who submitted two expert reports on the efficacy of COVID-19 vaccines and vaccine mandates.
18 *See* Dkt. 40; Dkt. 50. Dr. Risch’s first report was signed on May 19, 2024 and filed in support of
19 Strandquist’s partial summary judgment motion. Dkt. 40. In his first report, Dr. Risch provided
20 his opinions on the role of post-infection natural immunity in controlling the spread of COVID-
21 19, the frequency of breakthrough infections among vaccinated individuals, and the efficacy of
22 using COVID-19 vaccines to prevent transmission. *See generally* Dkt. 40-1. He cited CDC
23 articles and case studies as evidence to support his opinions about the likelihood of breakthrough
24 infections occurring among fully vaccinated healthcare workers and asserted that “it is clear that

1 at the time the Washington state and ESH employee COVID-19 vaccine mandates were enforced
2 in 2021, appreciable risks of breakthrough infections were evident, making vaccines
3 substantially imperfect for the supposed role of reducing infection risk.” Dkt. 40-1 at 6–7.
4 Dr. Risch also concluded that the “ESH vaccination mandate did not recognize documented
5 natural immunity [making] the mandate both not narrowly tailored and arbitrary in this lack of
6 recognition.” *Id.* at 11.

7 In the second report, prepared as part of a declaration in opposition to Defendants’
8 summary judgment motion, Dr. Risch referenced the opinions on breakthrough infections from
9 his earlier report, and applied those opinions to evaluate the risk of COVID-19 breakthrough
10 infections at Eastern. Dkt. 50-1 at 1. Dr. Risch opined:

11 CDC empirical data from 2021 showed that post-vaccination breakthrough
12 COVID-19 infections in that time period occurred in at least 4.6% of vaccinated
13 individuals. In the DSHS Eastern State Hospital where Plaintiff worked, the
14 fraction of staff seeking medical or religious exemptions from the mandate was
15 3.65%, less than this 4.6% number. The total DSHS staff exemption fraction was
16 3.84%, again less than the 4.6%. Thus, even if all exemption-requesting staff were
17 left to work without any accommodation changes, and even if every one of them
18 got Covid-19 in this time period, the infection burden in total among these
19 unvaccinated staff would have been less than the infection burden in total among
20 the great majority of staff who had been vaccinated.

21 *Id.* Dr. Risch compared the infection load among the employees at Eastern who were terminated
22 or accommodated, and CDC estimates of employees at Eastern who would have experienced
23 breakthrough infections:

24 Thus, among these vaccination fractions of 96.35% and 96.16%, the CDC data
estimate that 4.43% of Eastern State Hospital employees and 4.42% of DSHS
employees in total would have had Covid-19 post-vaccination breakthrough
infections, i.e., COVID-19 infections through vaccine failure during 2021. In
comparison, only 3.65% of Eastern State Hospital terminated or accommodated
employees and 3.84% of DSHS terminated or accommodated employees in total
were not vaccinated. Even if 100% of those unvaccinated employees had gotten
Covid during the same period, the infection load among the unvaccinated would
have been less than the infection load among the vaccinated.

1 *Id.* at 2–3. Dr. Risch also discussed whether mRNA products should be categorized as vaccines
2 based on his opinion that unlike “existing vaccines in human commercial use,” mRNA-type
3 COVID-19 vaccines “do not stimulate the immune system directly.” Dkt. 50-1 at 5. Dr. Risch
4 opined that given the different way mRNA products work in the body, these vaccines would not
5 satisfy “the four-part scrutiny principles laid out by Justice Harlan in the Jacobson (1905)
6 decision.” *Id.* Dr. Risch concluded his report by responding to Defendants’ arguments on their
7 accommodation process, asserting that “Defendants did not implement the Proclamation
8 [mandating vaccines for Washington healthcare workers], they went beyond the Proclamation in
9 not granting suitable accommodations to approved religious exemption requests.” *Id.* at 11.

10 Lisa Brock has worked in Human Resource (HR) Management since 1984 and submitted
11 two expert reports on implementing accommodations procedures. *See* Dkt. 41-1; Dkt. 48-1.
12 Brock testified that her professional opinion is “based on [her] training and [her] 40 years of
13 experience in employment law and HR practices, predominantly serving healthcare services.”
14 Dkt. 41 ¶ 4. For the first report, Brock reviewed Strandquist’s complaint, DSHS Administrative
15 Policy No. 18.25 (Affirmative Action and Religious Discrimination), DSHS Administrative
16 Policy No. 18.26 (Disability Reasonable Accommodation), and an email from Long to
17 Strandquist dated September 8, 2021. Dkt. 41-1 at 1. Brock included a step-by-step best practices
18 guide published by the Society for Human Resources Management (SHRM) on handling
19 requests for medical or religious exemptions to a vaccine requirement. Dkt. 41-1 at 2–8. For each
20 step, Brock provided a practical application, where she discussed the processes developed at her
21 former employers such as Overlake Medical Center and Clinics. *Id.* Brock then assessed whether
22 DSHS followed similar processes to those described in her practical application section. *Id.*
23 Brock concluded that based on her experiences in other health care settings, DSHS’s actions did
24 not conform to the best practices. *Id.*

1 Brock's second report addressed three arguments Defendants made in their summary
2 judgment motion. Dkt. 48-1. First, Brock opined that DSHS should have asked Strandquist for
3 additional information in October 2021 if it had any concerns about whether Strandquist had a
4 sincerely held religious belief. Dkt. 48-1 at 2. Second, Brock discussed DSHS's reassignment
5 accommodation and wrote, "as a Human Resources professional that has worked in healthcare
6 over 30 years, I struggle to understand how a 'good faith' effort could result in offering a highly
7 trained and educated physician a Financial Analyst position." *Id.* Third, Brock explained that at
8 Overlake, she had accommodated medical professionals with religious exemptions even if they
9 were involved in direct patient care. *Id.* at 2–3. Brock concluded, "I believe there were available
10 and appropriate accommodations available that could have and should have been offered
11 Dr. Strandquist." *Id.* at 3.

12 Defendants filed this motion on August 20, 2024, seeking to exclude Dr. Risch and Lisa
13 Brock as witnesses. Dkt. 36. Strandquist filed a response to the motion on September 10, 2024,
14 Dkt. 47, and Defendants replied. Dkt. 55.

15 II. DISCUSSION

16 A. Federal Rules of Evidence 702 and *Daubert*

17 Federal Rule of Evidence 702 governs the admissibility of expert testimony. Testimony is
18 permitted if it is both relevant and reliable. *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d
19 457, 463 (9th Cir. 2014) (en banc) (citing Fed. R. Evid. 702), *overruled on other grounds by*
20 *United States v. Bacon*, 979 F.3d 766 (9th Cir. 2020). Before trial, "[t]he trial court acts as a
21 'gatekeeper' to exclude expert testimony that" does not meet these standards. *Neal-Lomax v. Las*
22 *Vegas Metro. Police Dep't*, 574 F. Supp. 2d 1193, 1201 (D. Nev. 2008) (quoting *Kumho Tire*
23 *Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999)).
24

1 Expert testimony is relevant if it “will help the trier of fact to understand the evidence or
 2 to determine a fact in issue.” *Daubert v. Merrell Dow Pharms., Inc.* (“*Daubert I*”), 509 U.S.
 3 579, 591 (1993) (citing Fed. R. Evid. 702(a)); *see also Daubert v. Merrell Dow Pharmaceuticals*
 4 (“*Daubert II*”), 43 F.3d 1311, 1315 (9th Cir. 1995) (relevant evidence is that which “logically
 5 advances a material aspect of the proposing party’s case”), *cert. denied*, 516 U.S. 869 (1995).

6 Expert testimony is reliable if it is “based on sufficient facts or data,” “is the product of
 7 reliable principles and methods,” and “reflects a reliable application of the principles and
 8 methods to the facts of the case.” Fed. R. Evid. 702(b, c, d). More generally, evidence is reliable
 9 “if the knowledge underlying it ‘has a reliable basis in the knowledge and experience of [the
 10 relevant] discipline.’” *United States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir. 2006)
 11 (quoting *Kumho Tire*, 526 U.S. at 149). In *Daubert*, the Supreme Court set out several factors
 12 that courts may consider in determining reliability:

13 (1) whether a scientific theory or technique can be (and has been) tested;
 14 (2) whether the theory or technique has been subjected to peer review and
 15 publication; (3) the known or potential rate of error and the existence and
 maintenance of standards controlling the techniques operation; and (4) whether the
 technique is generally accepted.

16 *Neal-Lomax*, 574 F. Supp. 2d at 1201 (citing *Daubert I*, 509 U.S. at 593–94). However, these
 17 factors do not constitute a “definitive checklist or test,” *see Daubert I*, 509 U.S. at 593, and “[i]n
 18 other cases, the relevant reliability concerns may focus upon personal knowledge or experience.”
 19 *Kumho Tire*, 526 U.S. at 150. Nor do the *Daubert* factors “necessarily apply even in every
 20 instance in which the reliability of scientific testimony is challenged.” *Id.* at 151. Rather, “[t]he
 21 inquiry under Rule 702 is a ‘flexible’ one, and the district court has ‘the discretionary
 22 authority . . . to determine reliability in light of the particular facts and circumstances of the
 23 particular case.’” *Youngevity Int’l v. Smith*, No. 16-CV-704-BTM-JLB, 2019 WL 2918161, at
 24 *12 (S.D. Cal. July 5, 2019) (quoting *Kumho Tire*, 526 U.S. at 158); *see also Hangarter v.*

1 *Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1017 (9th Cir. 2004) (“[A] trial court not only
 2 has broad latitude in determining whether an expert’s testimony is reliable, but also in deciding
 3 how to determine the testimony’s reliability.” (internal quotations omitted)).

4 “Generally, an inquiry under Rule 702 examines the expert’s testimony as a whole.”
 5 *United States v. W. R. Grace*, 504 F.3d 745, 762 (9th Cir. 2007). The proponents of expert
 6 testimony bear the burden of establishing its admissibility over the objections of the opposing
 7 party by a preponderance of the evidence. *City of Seattle v. Monsanto Co.*, No. C16-107-RAJ-
 8 MLP, 2023 WL 4014294, at *4 (W.D. Wash. June 15, 2023) (citing *Daubert I*, 509 U.S. at 592
 9 n.10). District courts “must keep in mind Rule 702’s broad parameters of reliability, relevancy,
 10 and assistance to the trier of fact.” *Sementilli v. Trinidad Corp.*, 155 F.3d 1130, 1134 (9th Cir.
 11 1998) (internal quotations omitted).

12 **B. *Daubert* Motion**

13 *I. Dr. Risch’s Testimony*

14 *a. Reliability*

15 Defendants do not challenge the reliability of Dr. Risch’s testimony. *See* Dkt. 36. Their
 16 motion to exclude Dr. Risch is based solely on the relevance prong of Rule 702.

17 *b. Relevancy*

18 Defendants ask the Court to exclude Dr. Risch’s testimony because his reports are not
 19 relevant under FRE 702 or *Daubert*. Dkt. 36 at 11. Defendants argue that “Dr. Risch’s Report is
 20 nothing more than an after-the-fact facial challenge to the science behind the Proclamation
 21 [mandating vaccination for healthcare workers] itself.” *Id.*; *see* Dkt. 41 at 2. They assert that
 22 Dr. Risch questions the motivation behind the Proclamation’s vaccine mandate rather than
 23 focusing on the “pertinent inquiry” which is whether allowing Strandquist “to continue working
 24 in his public facing position, while unvaccinated and using only PPE for his own protection and

1 the protection of others, was an undue hardship.” Dkt. 36 at 11–12. In their reply, Defendants
2 reiterate that “Dr. Risch offers no opinion on the safety of PPE/masking/distancing,” and since
3 “his opinions on vaccine efficacy are not the ‘pertinent inquiry’ regarding Plaintiff’s request for
4 accommodation to use those measures,” Dr. Risch’s testimony should be excluded as irrelevant.
5 Dkt. 55 at 6.

6 The Court agrees that Dr. Risch’s testimony opining on the efficacy of COVID-19
7 vaccines generally, the role of natural immunity, and the Governor’s Proclamation requiring
8 vaccination should be excluded for lack of relevance. *See* Dkt. 40-1 at 2–11; *Pilz v. Inslee*, No.
9 3:21-CV-05735-BJR, 2022 WL 1719172, at *3–8 (W.D. Wash. May 27, 2022), *aff’d*, No. 22-
10 35508, 2023 WL 8866565 (9th Cir. Dec. 22, 2023). Facial challenges to the Proclamation have
11 been rejected, *see id.*, and Strandquist has repeatedly conceded in briefing and oral argument that
12 he is not challenging the vaccine mandate as a whole—only how its procedures were applied to
13 him. *See, e.g.*, Dkt. 52 at 11–12. Dr. Risch’s opinions on the efficacy of the vaccine mandate will
14 not assist the “trier of fact to understand the evidence or to determine a fact in issue.” Fed. R.
15 Evid. 702(a).

16 In addition, Dr. Risch’s conclusions about whether Defendants provided a reasonable
17 accommodation or established undue hardship must also be excluded. *See* Dkt. 50-1 at 5–11.
18 While Federal Rule of Evidence 704(a) states that “[a]n opinion is not objectionable just because
19 it embraces an ultimate issue,” the Ninth Circuit has held “[c]onsistent with Rule 704(a), this
20 court has repeatedly affirmed that ‘an expert witness cannot give an opinion as to her legal
21 conclusion, i.e., an opinion on an ultimate issue of law.’” *United States v. Diaz*, 876 F.3d 1194,
22 1197 (9th Cir. 2017) (quoting *Hangarter*, 373 F.3d at 1016); Fed. R. Evid. 704(a). “This
23 prohibition of opinion testimony on an ultimate issue of law recognizes that, ‘when an expert
24 undertakes to tell the jury what result to reach, this does not aid the jury in making a decision,

1 but rather attempts to substitute the expert’s judgment for the jury’s.” *Id.* (quoting *United States*
2 *v. Duncan*, 42 F.3d 97, 101 (2d Cir. 1994)).

3 If an expert witness uses terms that have a specialized meaning in the law and “represent
4 an attempt to instruct the jury on the law, or how to apply the law to the facts of the case,” the
5 testimony is an impermissible legal conclusion. *Diaz*, 876 F.3d at 1198–99. Dr. Risch opined that
6 Defendants could have provided a “reasonable accommodation” that would allow Strandquist to
7 continue in his position using personal protective equipment (PPE) and Defendants failed to
8 show that the accommodation created “undue hardship.” Dkt. 50-1 at 5–11. Terms such as
9 “reasonable accommodation” and “undue hardship” have a “separate, distinct, and specialized
10 meaning in the law different from that present in the vernacular.” *Id.* at 1198 (quoting *United*
11 *States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006)); *see* Dkt. 50-1 at 5–13. Since the testimony
12 draws legal conclusions that should be left to the jury, the Court excludes these portions of
13 Dr. Risch’s expert reports.

14 But the Court will not exclude all of Dr. Risch’s testimony. In his first report, Dr. Risch
15 disclosed opinions about the risk of breakthrough infections even among vaccinated individuals.
16 Dkt. 40-1 at 5–7. Defendants have not challenged the reliability of these opinions. In his
17 declaration opposing Defendants’ summary judgment motion, Dr. Risch explained how those
18 opinions suggest that the theoretical transmission rate of COVID from a small number of
19 unvaccinated employees at Eastern wearing PPE would be lower than from a larger vaccinated
20 group of workers given the rate of breakthrough infections. Dkt. 50-1 at 1–3. Specifically,
21 Dr. Risch opined that based on CDC data from 2021, an estimated 4.43% of total Eastern
22 employees would have had post-vaccination breakthrough infections. *Id.* at 2. But since only
23 3.65% of Eastern employees were terminated or accommodated based on religious objections to
24 the vaccine, “even if 100% of those unvaccinated employees had gotten Covid during the same

time period, the infection load among the unvaccinated would have been less than the infection load among the vaccinated.” *Id.* at 2–3. This testimony is relevant because it goes to the parties’ factual dispute as to whether permitting Strandquist to continue working unvaccinated using PPE created such a risk to health and safety that it constituted an undue hardship for Defendants. *See Chavez v. San Francisco Bay Area Rapid Transit Dist.*, --- F. Supp. 3d ---, 2024 WL 3334741, at *11 (N.D. Cal. June 21, 2024) (explaining that the case would proceed to trial on undue hardship analysis because “parties have each mustered evidence supporting their competing views on undue hardship and the extent to which BART undertook the necessary individualized analysis”). This portion of Dr. Risch’s opinions directly addresses the “pertinent issue” that Defendants raise. *See* Dkt. 36 at 11–12. It is therefore relevant under *Daubert* and will not be excluded.

2. *Lisa Brock’s Testimony*

a. *Reliability*

Defendants seek to exclude Brock as a witness because her testimony is unreliable. Dkt. 36 at 6; Dkt. 55 at 2. Defendants assert that Brock’s opinions are not scientific because they “depend solely [on] a general background in Human Resources.” Dkt. 36 at 6. Instead of citing to peer reviewed materials or establishing a factual foundation for her opinions, Defendants argue that Brock relies primarily on her experiences at Overlake and anecdotal evidence from other employers. *Id.* at 6–9. Strandquist responds that Brock is a “30-year veteran of Human Resources management for health care providers” and “bases her report on SHRM guidance on ‘How to Handle an Employee’s Request for a Religious or Medical Accommodation to a Vaccine Requirement.’” Dkt. 47 at 6–7.

“The reliability determination focuses on the scientific validity of the principles and methodology used by the expert.” *Arjangrad v. JPMorgan Chase Bank, N.A.*, No. 3:10-CV-

1 01157-PK, 2012 WL 1890372, at *4 (D. Or. May 23, 2012) (citations omitted). “When the
2 testimony concerns ‘non-scientific’ issues, the reliability inquiry of ‘the *Daubert* factors (peer
3 review, publication, potential error rate, etc.) simply are not applicable to this kind of testimony,
4 whose reliability depends heavily on the *knowledge* and *experience* of the expert, rather than the
5 methodology or theory behind it.” *Erwin v. OBI Seafoods, LLC*, No. 2:22-CV-00893-JHC, 2024
6 WL 553697, at *2 (W.D. Wash. Feb. 12, 2024) (citing *Hangarter*, 373 F.3d at 1017). When a
7 witness relies primarily on experience, “then the witness must explain how that experience leads
8 to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that
9 experience is reliably applied to the facts.” *Id.* at *2. (citing Fed. Civ. R. P. 702 Committee Notes
10 on Rules—2000 Amendment).

11 Brock’s expert testimony does not meet the reliability threshold. In *Moussouris*, the
12 district court persuasively explained that “an expert cannot rely on the mere fact of his
13 experiences with respect to human resources matters to support his conclusion.” *Moussouris v.*
14 *Microsoft Corp.*, 311 F. Supp. 3d 1223, 1246–47 (W.D. Wash. 2018) (internal quotations and
15 citations omitted). While Brock lists out a step-by-step best practice guide from SHRM for
16 responding to vaccine mandate accommodations, she relies exclusively on her personal
17 experiences with different employers to reach the conclusions in the report. *See* Dkt. 41-1 at 3–8.
18 For example, the evidence Brock presents to show that Strandquist was not given the opportunity
19 to engage in an interactive accommodations process is that “Overlake did not terminate
20 employees that were not vaccinated October 18, 2021. They were placed on unpaid
21 administrative leave for 3 months.” *Id.* at 8.

22 In addition, Brock’s testimony does not show a methodological nexus between her
23 experiences and conclusions. *See Erwin*, 2024 WL 553697, at *3. Nor is it based on sufficient
24 facts or data. *See Moussouris*, 311 F. Supp. 3d at 1244–45. Her report states only the differences

1 between policies of her former employers and Defendants’ accommodation procedures. *See*
2 Dkt. 41-1 at 3–8. For instance, Brock opined that at Overlake, “once we decided a disability or
3 religious exemption existed, we had to decide upon a reasonable accommodation. A variety of
4 accommodations were considered. In the scope of Overlake’s operations, we did not believe
5 providing PPE or testing was an undue hardship.” *Id.* at 6. Brock then concluded that she “sees
6 no evidence of an undue hardship evaluation” conducted by DSHS because “[m]ost [] healthcare
7 employers found it was not an undue hardship to accommodate disability/medical and religious
8 exemptions through PPE and testing.” *Id.* at 7. But the scope of Brock’s review of the evidence
9 in the case was so extraordinarily limited—consisting only of the Plaintiff’s complaint, one
10 email, and two administrative policies—that it cannot reliably support her opinions. Although
11 expert witnesses may rely on competing versions of contested facts, the proponent of their
12 testimony must still establish that the testimony “is based on sufficient facts or data” for the
13 witness to form a reliable opinion. Fed. R. Evid. 702(b).

14 Ultimately, Strandquist does not demonstrate that Brock’s opinions are based on
15 sufficient facts or data or “are the product of reliable principles and methods,” and “[t]his
16 subjective conclusory approach cannot reasonably be assessed for reliability and is plainly
17 insufficient under *Daubert*.” *Arjangrad*, 2012 WL 1890372, at *5 (internal citation omitted)
18 (finding the expert witness unreliable because he “never explains how his experience performing
19 discrimination investigations or his expertise advising employers and HR professionals led him
20 to understand and define generally accepted standards of HR investigation practices”); *see Li v.*
21 *Ne. Univ.*, No. 2:22-CV-00444-LK, 2023 WL 3722227, at *25 (W.D. Wash. May 30, 2023)
22 (“The Court is not suggesting that Dr. Blanck must map out every single inferential step;
23 however, he must at some point articulate a coherent explanation as to why his previous studies
24 and experience lead to his conclusions.”).

Even when liberally construing FRE 702 in favor of admissibility, the Court finds that Brock's testimony lacks support from sufficient facts or data and fails to sufficiently specify the method by which she reached her conclusions. *See Moussouris*, 311 F. Supp. 3d at 1246. Because Brock's testimony does not satisfy the standard for reliability under *Daubert*, the Court grants Defendants' motion and excludes Brock's testimony.

b. Relevancy

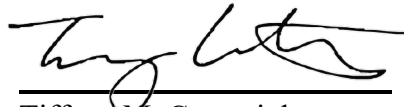
Defendants also seek to exclude Brock's testimony on relevancy grounds. Dkt. 36 at 10. Defendants argue that Brock's testimony "will not assist the trier of fact in understanding the evidence or determining a fact at issue" because "concepts of reasonable accommodations and undue hardship are within every jury member's understanding." *Id.* Having found that Brock's expert testimony is unreliable, the Court excludes her testimony and declines to address this portion of the *Daubert* test. *See Erwin*, 2024 WL 553697, at *3 n.3 (declining to evaluate the relevance prong after the Court found the expert witness testimony to be unreliable).

III. CONCLUSION

For the foregoing reasons, Defendants' joint *Daubert* motion is GRANTED IN PART AND DENIED IN PART as follows:

- The motion to exclude the testimony of Dr. Risch is DENIED only as to testimony regarding risk of COVID transmission from breakthrough infections among vaccinated individuals and the comparable risk of transmission from unvaccinated employees with religious exemptions.
- The motion to exclude the testimony of Dr. Risch is otherwise GRANTED because the remainder of his opinions are either not relevant or express impermissible legal conclusions.
- The motion to exclude the testimony of Lisa Brock is GRANTED.

1 Dated this 30th day of October, 2024.

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3 Tiffany M. Cartwright
4 United States District Judge
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